

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LARRY T. BROWN, SR.</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 196,123
<b>LAROCHELLE, INC.</b>	)	
Respondent	)	
	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

The Kansas Workers Compensation Fund requested the Appeals Board to review the February 10, 1997, Award of Special Administrative Law Judge William F. Morrissey.

**APPEARANCES**

Claimant appeared by his attorney, Thomas R. Leitz of Topeka, Kansas. The respondent appeared not as the respondent was uninsured, insolvent, and no longer doing business. The Kansas Workers Compensation Fund appeared by its attorney, Jeff K. Cooper. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted stipulations listed in the Award.

**ISSUES**

The Kansas Workers Compensation Fund (Fund) was impleaded in this proceeding pursuant to K.S.A. 44-532a(a). The respondent has no insurance coverage, is insolvent, and is no longer doing business.

The Fund raised the following issues in its Application for Review:

- (1) Whether claimant suffered personal injury by accident that arose out of and in the course of his employment on June 1, 1994.
- (2) Whether claimant gave timely notice of the accident to the respondent.
- (3) Whether medical expenses for treatment of claimant's injury should have been ordered paid.
- (4) Claimant's average weekly wage.

Claimant requested Appeals Board review of the following issue:

- (5) Claimant's average weekly wage.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant alleges he injured his low back in a work-related accident on or about June 1, 1994. Claimant did not seek medical treatment for this injury until September 26, 1994. The parties stipulated that claimant has a 7 percent permanent functional impairment to the body as a whole because of the low back injury. However, the Fund claims claimant's low back injury is not work-related. The Special Administrative Law Judge found claimant proved he suffered a work-related injury but awarded claimant only medical treatment expenses because the Special Administrative Law Judge found claimant had failed to prove the amount of his average weekly wage. The Appeals Board finds that claimant failed to prove that his low back condition was related to the June 1, 1994, accident.

(1) Claimant claims he suffered a low back injury on June 1, 1994, when he slipped and fell as he was getting out of his truck. Claimant was employed by the respondent as an over-the-road truck driver which included loading and unloading. Claimant testified he notified respondent's dispatcher of the fall. Claimant continued to work for the respondent until September 7, 1994. He was terminated at that time because he was incarcerated for five days for outstanding traffic warrants in Topeka, Kansas. Claimant did not seek any

medical treatment for his alleged low back injury until September 26, 1994, some two weeks after his termination.

On September 26, 1994, claimant went to Stormont-Vail Hospital Emergency Room complaining of pain in his low back. The emergency room medical records contained a history from claimant that he drove a truck but no history of injury. Claimant again visited the Stormont-Vail Emergency Room on October 1, 1994, with excruciating back pain caused by a fall when he slipped off a curb while he was intoxicated. At that time, the emergency room medical personnel referred claimant to Joseph E. Mumford, M.D., an orthopedic surgeon in Topeka, Kansas, for further examination and treatment.

Dr. Mumford saw claimant on October 4, 1994. Claimant gave Dr. Mumford a history that three weeks before he developed excruciating pain in his back that radiated down his right leg. The 7 percent permanent functional impairment rating stipulated by the parties was Dr. Mumford's opinion. Claimant had returned to work in May 1995 as a sanitation worker in a meat plant and on the day of the regular hearing, January 9, 1996, was still employed.

The evidentiary record of this case does not contain any medical evidence either in the form of a deposition of a doctor or medical records that were admitted by stipulation. The parties did stipulate that claimant's low back problem resulted in a 7 percent permanent functional whole body impairment rating. However, neither Dr. Mumford's medical treatment records nor his written permanent functional impairment opinion were made part of the evidentiary record. The medical information concerning claimant's treatment at the Stormont-Vail Hospital Emergency Room is contained in the transcript of the regular hearing through questions asked claimant by the Fund's attorney. The emergency room medical records were not offered into evidence by either party.

In a workers compensation case, it is a well-established rule of law that the claimant has the burden to establish his right to an award of compensation by proving all the various conditions on which his right to a recovery depends. See Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). The claimant, in the case at hand, had the burden to persuade the Appeals Board that it is more probably true than not that he suffered a personal injury by accident that arose out of and in the course of his employment with respondent on June 1, 1994. See K.S.A. 44-508(g). In reviewing the whole record, the Appeals Board finds that the claimant has failed to meet this burden. The evidence presented does not prove that claimant's low back injury was caused by a fall that allegedly occurred on or about June 1, 1994.

The Appeals Board concludes that it is just as probable that claimant suffered permanent injury to his low back by some non-work related accident, such as when he was intoxicated and fell on October 1, 1994, and he had to seek medical treatment for the excruciating pain, as it is that he suffered an accident at work as alleged. Therefore, the Appeals Board finds benefits should be denied.

The Appeals Board finds because of the above finding all remaining issues before the Appeals Board are rendered moot.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey, dated February 10, 1997, is reversed and the claimant, Larry T. Brown, Sr., is denied an award of workers compensation benefits against the respondent Larochelle, Inc., and the Kansas Workers Compensation Fund for an alleged accidental injury that occurred on June 1, 1994.

The order contained in the Award assessing costs of the Special Administrative Law Judge's fee and the reporter's fee against the Kansas Workers Compensation Fund is adopted by the Appeals Board.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Thomas R. Leitz, Topeka, KS  
Jeff K. Cooper, Topeka, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director